

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC# 5/28/13  
DATE FILED: 5/28/13

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

HOWARD THOMAS,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

**STIPULATION AND ORDER  
OF SETTLEMENT AND  
DISCONTINUANCE**

12 Civ. 9040 (CM) (AJP)

ECF CASE

WHEREAS, Plaintiff Howard Thomas ("Plaintiff") commenced the above-captioned action bearing Case Number 12 Civ. 9040 (CM)(AJP), by filing a complaint on or about December 12, 2012, asserting claims against the United States of America (the "United States") under the Federal Tort Claims Act and federal constitutional claims against defendants Jerome White, Jr., Judith Almodovar, Johnny Luna, Deborah Achim, Michael J. Pitts, Janie Martinez, Howard Bergendahl, and Carlos Tapia (the "Individual Defendants"); and

WHEREAS, Plaintiff subsequently filed an amended complaint on January 25, 2013, asserting the same constitutional claims against one additional Individual Defendant, Brian Nicklaw; and

WHEREAS, Plaintiff and the United States now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability of any party; and

WHEREAS, Plaintiff has agreed to dismiss all claims against the Individual Defendants; NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff and all defendants, that this action shall be settled and resolved as follows:

1. Plaintiff withdraws any and all claims against Individual Defendants Jerome White, Jr., Judith Almodovar, Johnny Luna, Deborah Achim, Michael J. Pitts, Janie Martinez, Howard Bergendahl, Carlos Tapia, and Brian Nicklaw, with prejudice, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, without costs or attorney's fees to any party.

2. Defendant United States hereby agrees to pay Plaintiff the total sum of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) in full and final settlement and satisfaction of all claims brought by Plaintiff against the United States, including claims for costs, expenses and attorney's fees. In consideration for the payment of this sum, Plaintiff agrees to the dismissal of all the claims in the above-captioned cases against the United States and any present or former employees, agents, officials, agencies, or departments of the United States, from any and all liability, claims, or rights of action arising from, contained in, and related to the facts and circumstances alleged in the complaint and amended complaint in the above-captioned action, including claims for costs, expenses and attorney's fees.

3. Plaintiff agrees to accept payment of the consideration set forth in paragraph "2" above in full and final settlement and satisfaction of any and all claims and demands for personal injury, property damage, or any other damages that Plaintiff and his heirs, executors, administrators, successors or assigns may have or hereafter acquire on account of the events, facts, circumstances, or incidents giving rise to the above-captioned action and claims incident thereto. Plaintiff hereby releases and forever discharges the Individual Defendants, the United States, and any of its present or former departments, agencies, agents, officials or employees, from any and all claims and liability for personal injury, property damage, or any other damages

arising directly or indirectly from the events, facts, circumstances, or incidents giving rise to or referred to in the complaints and amended complaints in the above-captioned actions.

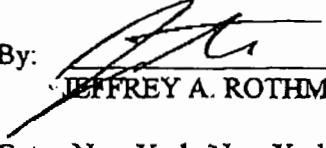
4. Payment of the consideration set forth in paragraph "2" above shall be made only after execution by the parties and entry by the Court of this Stipulation and Order of Settlement and Discontinuance ("Stipulation and Order").

5. Settlement of the above-captioned action is to be without interest, costs, or disbursements, and inclusive of attorney's fees in accordance with 28 U.S.C. § 2678, and all liens and fees are to be satisfied out of the amount of this settlement.

6. Nothing contained in this Stipulation and Order herein shall be deemed to be an admission of liability or fault on the part of any of the defendants, or any of their present or former departments, agencies, agents, officials or employees, nor shall it be deemed to be an admission that they have in any manner or way violated Plaintiff's rights, or the rights of any other person or entity. This Stipulation and Order shall not be admissible in any other litigation or settlement negotiations.

7. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or counsel that are not included herein shall be of any force or effect.

LAW OFFICES OF  
JEFFREY A. ROTHMAN  
*Attorney for Plaintiff*  
315 Broadway, Suite 200  
New York, New York 10007  
(212) 227-2980

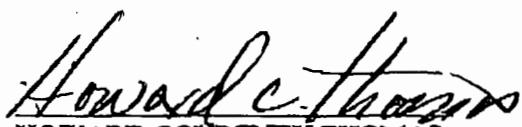
By:   
JEFFREY A. ROTHMAN

Date: New York, New York  
May 28, 2013

PREET BHARARA  
United States Attorney for the  
Southern District of New York  
*Attorney for the United States*  
and *Individual Defendants*

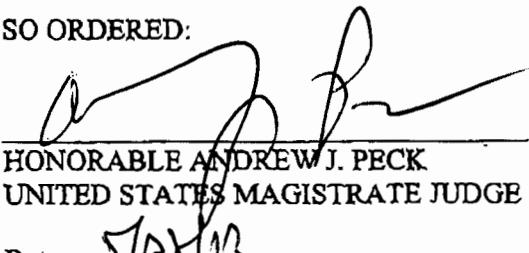
By:   
CRISTINA IRVIN PHILLIPS  
Assistant United States Attorney  
86 Chambers Street  
New York, New York 10007  
(212) 637-2696

Date: New York, New York  
May 28, 2013

  
HOWARD COURTNEY THOMAS  
*Plaintiff*

New York, New York  
Date: May 28, 2013

SO ORDERED:

  
HONORABLE ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE

Date: 5/28/13

HON. ANDREW J. PECK  
United States Magistrate Judge  
Southern District of New York

cc: ECP: Ad Gurny

BY ECA